

**REMARKS**

Claims 1-3, 7-9, 11, 12, 14-26 and 30-34 are now pending in the application, with claims 1 and 11 being the independent claims. Reconsideration and further examination are respectfully requested.

**Withdrawal of Finality**

At the outset, it is noted that the present Office Action is indicated as being a final rejection of the claims. Withdrawal of the finality of the Office Action is respectfully requested for the following reasons.

Regarding final rejections, MPEP §706.07(a) provides:

“Under present practice, second or any subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is neither necessitated by applicant’s amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. 1.97(c) with the fee set forth in 37 C.F.R. 1.17(p).”

In the present case, the Examiner has introduced new grounds of rejection for claims 1-18, i.e., the current § 102 and § 103 rejections, which rely upon an entirely new reference (Lebens). These new grounds for rejection were neither necessitated by Applicant's amendment (i.e., those claims were not amended in the last Response) nor based on information in an Information Disclosure Statement. Accordingly, it is believed that the present rejection should not have been made final, and withdrawal of such finality is respectfully requested.

Rejections Under § 112, Second Paragraph

In the Office Action, claims 20, 22 and 26 were rejected under 35 USC § 112, second paragraph. Withdrawal of these rejections is respectfully requested for the following reasons.

With regard to claim 20, it was asserted in the Office Action that the limitation, "depressing the switch in the first direction causes a characteristic of a resulting light beam to change in one direction and depressing the switch in the second direction causes the characteristic of the resulting light beam to change in an opposite direction" is unclear. In support of this rejection, the Office Action states, "Since all light sources are faced [in the] same direction, [a] characteristic of any one can't be changed in an opposite direction."

Applicant does not believe that the subject language of claim 20 is ambiguous. It refers to a characteristic of the resulting light beam, which is not necessarily the direction in which the light beam is pointed. For example, consistent with this limitation, depressing the rocker switch in one direction (e.g., forward) might, e.g., increase the brightness, beam length, power consumption or reddish tint of the light produced by the flashlight, while depressing the rocker switch in the other direction (e.g., backward) causes the corresponding light characteristic to decrease (i.e., become less bright, decrease beam length, decrease power consumption or reduce reddish tint). See, e.g., page 7 lines 1-9 of the Specification. Thus, the limitation is believed to be clear, particularly in view of the reference portion of the Specification. Accordingly, withdrawal of the § 112 rejection of claim 20 is respectfully requested.

As to claims 22 and 26, Applicant has amended those claims above to clarify that "each time the switch is activated the integrated circuit causes a change in which of the plurality of light sources, if any, are illuminated, and the new set of illuminated light source(s), if any, remain illuminated until a next activation of the switch." Based on this clarification, withdrawal of the rejection of claims 22 and 26 also is respectfully requested.

#### Prior Art Rejections

Claims 1, 5-7, 10-12, 17, 21 and 25 were rejected under 35 USC § 102(b)<sup>1</sup> over U.S. Patent 6,305,818 (Lebens); claims 2-4, 13-15, 18, 19, 22, 24 and 26-31 were rejected under § 103(a) over Lebens in view of U.S. Patent 6,012,824 (Sharrah); claims 8, 9, 16 and 23 were rejected under § 103(a) over Lebens in view of U.S. Patent 6,394,622 (Macek); and claims 32 and 33 were rejected under § 103(a) over Lebens in view of Macek and U.S. Patent 5,347,261 (Adell). Withdrawal of these rejections is respectfully requested for the following reasons.

The present invention concerns an improved flashlight that retains many of the advantages of a conventional mechanical flashlight. However, a flashlight according to the present invention also utilizes an integrated circuit or multi-state device in order to provide additional flexibility and functionality that is not found in such a conventional mechanical flashlight.

Thus, independent claim 1 is directed to a flashlight that includes a plurality of light sources, each providing light when energized. A provided housing is configured so

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<sup>1</sup> It is believed that the rejection should have been under § 102(e), as Lebens issued less than one year prior to the filing date of the current application.

as to direct that light into a beam, and a provided integrated circuit is configured to control which of the plurality of light sources is/are illuminated. A pushbutton switch, operable by a user, is electrically coupled to the integrated circuit. The integrated circuit controls illumination of the light sources based on input signals from the pushbutton switch. More specifically, the integrated circuit is a multi-state electronic device that changes state when a signal is input from the switch, with different states of the integrated circuit causing different combinations of the light sources to become illuminated. The integrated circuit cycles through a fixed number of states, one state each time the pushbutton switch is depressed, beginning at an initial state in which all of the light sources are off and then, after cycling through the fixed number of states, returning to the initial state, whereupon the cycle may be repeated.

The foregoing combination of features is not disclosed or suggested by the applied art. For instance, the applied art has been studied in detail and is not seen to disclose or to suggest at least the feature of: *a flashlight that includes an integrated circuit that cycles through a fixed number of states, one state each time a pushbutton switch is depressed, beginning at an initial state in which all of the light sources are off and then, after cycling through the fixed number of states, returning to the initial state, whereupon the cycle may be repeated.*

Independent claim 1 has been amended above to recite the foregoing limitation. Accordingly, it has not previously been considered by the Examiner. However, as noted above, Applicant has carefully studied all of the applied art and is unable to find any suggestion of such a feature. For at least this reason, independent claim 1 is believed to be allowable over the applied art.

Independent claim 11 is directed to a flashlight that includes a hand-sized flashlight body, plural light sources disposed within the flashlight body, and a switch disposed on the flashlight body. The flashlight body is configured to direct light from the plural light sources. Also provided is a multi-state electronic device that has plural states and is electrically coupled to the switch and to the plural light sources. Each activation of the switch causes the multi-state electronic device to advance to a next one of the plural states, with the multi-state electronic device only changing state when a signal is input from the switch, and with each of the plural states causing a different combination of the light sources to illuminate.

The foregoing combination of features also is not disclosed or suggested by the applied art. For instance, the applied art does not disclose or suggest at least the feature of: *a flashlight that includes a multi-state electronic device for advancing through plural states in which different combinations of light sources are illuminated, where the state only changes when a signal is input from a provided switch.*

In this regard, the only applied reference that utilizes an electronic multi-state device is Lebens. However, the primary purpose of Lebens is to provide an illumination device that can maintain a constant color output, or that can maintain some other characteristic of the output light at a constant value, while the voltage of the power source varies. See, e.g., Lebens Abstract. Accordingly, Lebens uses a feedback path to modify the illumination pattern when conditions change (typically caused by a change in the battery voltage). See, e.g., Lebens Figure 1.

The existence of Lebens's feedback path means that the state of his multi-state electronic device may change frequently, even when a signal is not input from a

provided switch, contrary to the above-referenced limitation of claim 1. Moreover, there would have been no motivation to modify Lebens in any way that would have resulted in the present invention.

Generally speaking, the flashlight (or other light source) provided by Lebens addresses a specific problem that otherwise may occur when utilizing a variety of different LEDs for providing light, i.e., that the characteristics of the light change as the battery becomes discharged. However, the circuitry utilized by Lebens to address this problem is fairly involved, meaning that a flashlight (or other light source) according to Lebens may be expensive.

On the other hand, the present invention typically can employ a very simple multi-state device to accomplish its intended purpose. As a result, a flashlight according to claim 11 often can be constructed so that it is not significantly more expensive than a comparable conventional mechanical flashlight. For example, as described in the Specification, a simple counter circuit can be utilized to change the pattern of light sources that are illuminated at any given time. Nevertheless, a flashlight according to claim 11 typically can provide more flexibility than such a conventional mechanical flashlight in terms of available illumination patterns.

In short, a flashlight according to claim 11 is addressed to a significantly different need than the flashlight of Lebens. None of the other applied art provides any motivation to modify Lebens in any manner that would result in a flashlight according to claim 11. Accordingly, claim 11 is believed to be allowable over the applied art.

Conclusion

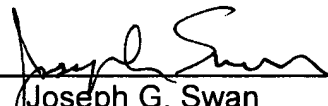
In view of the above amendments, the entire application is believed to be in condition for allowance, and an indication to that effect is respectfully requested.

If there are any fees due in connection with the filing of this paper that have not been accounted for in this paper or the accompanying papers, please charge the fees to our Deposit Account No. 13-3735. If an extension of time under 37 C.F.R. 1.136 is required for the filing of this paper and is not accounted for in this paper or the accompanying papers, such an extension is requested and the fee (or any underpayment thereof) should also be charged to our Deposit Account No. 13-3735. A duplicate copy of this page is enclosed for that purpose.

Respectfully submitted,

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